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8 MONTANA FIRST JUDICIAL DISTRICT COURT
LEWIS AND CLARK COUNTY
9

10 CITY OF HARDIN and TWO RIVERS
11 AUTHORITY,

12 Plaintiffs,

13 v.

14 STATE OF MONTANA and THE
15 MONTANA DEPARTMENT OF
CORRECTIONS,

16 Defendants.
17

Cause No. BDV-2007-955

**DEFENDANTS' MOTION TO
DISMISS**

18 On behalf of Defendants the State of Montana and the Montana Department
19 of Corrections, and under the authority of Mont. R. Civ. P. 12(b)(6), the Attorney
20 General hereby moves to dismiss the Amended Complaint filed by the City of
21 Hardin and Two Rivers Authority (Plaintiffs) on the ground that it fails to state a
22 claim upon which relief can be granted. Additional argument in support of this
23 motion is set forth in the accompanying Brief in Support of Motion to Dismiss.

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1 Respectfully submitted this 18th day of January, 2008.

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14 **CERTIFICATE OF SERVICE**

15 I hereby certify that I caused a true and accurate copy of the foregoing
16 Defendants' Motion to Dismiss to be mailed to:

17 Mr. Robert L. Sterup
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28 DATED:  Jan. 18, 2008 

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Cause No. BDV-2007-955

**BRIEF IN SUPPORT OF
DEFENDANTS' MOTION TO
DISMISS**

18 The Defendants respectfully submit the following Brief in Support of their
19 Motion to Dismiss the Amended Complaint.
20

21 **BACKGROUND**

22 Plaintiffs are two local government entities who have constructed a
23 multi-jurisdictional detention center in Hardin, Montana, known as the Two Rivers
24 Detention Center. In their Amended Complaint for Declaratory and Injunctive
25 Relief, Plaintiffs ask this Court to interpret and declare the meaning of two statutes,
26 Mont. Code. Ann. § 7-32-2242 and § 7-32-2243. Plaintiffs claim these statutes
27 grant them authority to contract with agencies of other states and the federal

1 government to confine offenders who are committed by the out-of-state jurisdiction
2 or the federal government. See Amended Complaint, ¶¶ 24, 29. The Amended
3 Complaint also asks this Court to enjoin the State of Montana from preventing
4 Plaintiffs from entering into those contracts, and to stay execution of an Attorney
5 General opinion in which the Attorney General opines that Plaintiffs have no such
6 authority, and/or order it to be withdrawn. Amended Complaint, ¶ 37; see 52 Op.
7 Atty. Gen. No. 4 (2007).

8 Resolution of this case is strictly a matter of statutory construction. The
9 Amended Complaint fails to state a claim upon which relief can be granted because,
10 irrespective of the facts alleged, the law prevents use of the Two Rivers Detention
11 Center for the purpose proposed by Plaintiffs. Not only is the proposed use of the
12 facility unauthorized, but it conflicts with Montana's overall correctional scheme to
13 provide for Montana offenders--not to benefit economically from the interstate
14 exchange of inmates. Plaintiffs have thus failed to state a claim for declaratory
15 relief.

16 Absent any statutory authority to contract with out-of-state or federal
17 authorities for the long-term confinement of their convicted felons, Plaintiffs are not
18 entitled to injunctive relief. The Attorney General's opinion is a correct
19 interpretation of the law, and while this Court has the ability to overrule an opinion
20 of the Attorney General, it does not have authority to order an opinion be
21 withdrawn. The request for injunctive relief should therefore be denied, and the
22 Amended Complaint dismissed in its entirety.

23 24 **STANDARD OF REVIEW**

25 Declaratory relief is intended to "settle and afford relief from uncertainty and
26 insecurity with respect to rights, status and other legal relations." Mont. Code Ann.
27 § 27-8-102. Preliminary injunctive relief is available if "it appears that the

1 applicant is entitled to the relief demanded and the relief or any part of the relief
2 consists in restraining the commission or continuance of the act complained of,
3 either for a limited period or perpetually.” Mont. Code Ann. § 27-19-201(1).

4 For purposes of a motion to dismiss under Rule 12(b)(6), Mont. R. Civ. P.,
5 the allegations of fact stated in the complaint are assumed to be true. If those facts
6 fail to set forth a claim upon which relief can be granted, the complaint is subject to
7 dismissal. Campanella v. Montana Dept. of Transportation, 2007 MT 2, ¶ 6,
8 335 Mont. 212, 156 P.3d 1.

10 ARGUMENT

11 **I. PLAINTIFFS FAIL TO STATE A CLAIM FOR DECLARATORY** 12 **RELIEF.**

13 **A. Montana Law Does Not Permit the Use of the Facility for the** 14 **Purpose Proposed by Plaintiffs.**

15 Plaintiffs seek a judicial declaration that they may contract with other state
16 and federal authorities to house prisoners who are sentenced to confinement in those
17 other jurisdictions. The law does not permit this use of a detention center.

18 The governing statute is Mont. Code Ann. § 7-32-2203:

19 **Who may be confined in a detention center.** Detention
20 centers are used as follows:

21 (1) for the detention of persons committed in order to secure their
22 attendance as witnesses in criminal cases;

23 (2) for the detention of persons charged with crime and committed
24 for trial;

25 (3) for the confinement of persons committed for contempt or
26 upon civil process or by other authority of law;

27 (4) for the confinement of persons sentenced to imprisonment
therein upon conviction or by other authority of law;

(5) for the confinement of persons sentenced to the state prison, as
agreed upon by the state and the administrator in charge of the
detention center.

1 Pursuant to this statute, a detention center may house persons in anticipation of a
2 criminal trial (subsections 1 and 2); persons committed for contempt or other
3 misdemeanor offenses (subsections 3 and 4); and Montana state prisoners
4 (subsection 5). Nothing in this statute authorizes or even suggests that a detention
5 center may be used to house convicted felons from other jurisdictions.

6 The uses described in Mont. Code Ann. § 7-32-2203 are consistent with the
7 historic purpose of a county jail as a place to confine persons awaiting trial or those
8 convicted of misdemeanors. See Mont. Code Ann § 7-32-2203 (1979). Detention
9 centers are, in fact, county jails that were renamed “detention centers” in 1989. See
10 1989 Mont. Laws, ch. 561, § 15. The current definition of “detention center” also
11 reflects its historic function as a place of short-term confinement: “‘Detention
12 center’ means a facility established and maintained by an appropriate entity for the
13 purpose of confining arrested persons or persons sentenced to the detention center.”
14 Mont. Code Ann. § 7-32-2241(1).¹

15 Until 1989, there was no provision for housing adult felony offenders in a
16 detention center for the purpose of serving a sentence, let alone adult felony
17 offenders convicted in another jurisdiction. Senate Bill 452 was adopted in 1989
18 and added subsection (5) to Mont. Code Ann. § 7-32-2203, which allows inmates
19 sentenced to the state prison to be housed in a detention center. This was the first
20 time the Legislature authorized use of a detention center for longer term
21 confinement of inmates convicted of felonies. Even with this substantial change,
22

23 ¹A multijurisdictional detention center such as Two Rivers Detention Center is
24 similarly defined: “‘Multijurisdictional detention center’ means a detention center
25 established and maintained by two or more local governments for the confinement
26 of persons arrested or sentenced to confinement or a local government detention
27 center contracting to confine persons arrested or sentenced in other local
governments.” Mont. Code Ann. § 7-32-2241(6).

1 there was no mention in the hearing on Senate Bill 452 of expanding use of a
2 county jail to include long-term confinement of out-of-state or federally convicted
3 felons. Clearly the Legislature was concerned with providing additional space for
4 Montana's inmates, not bringing in a new population of out-of-state offenders.²

5 Despite the clear language of Mont. Code Ann. § 7-32-2203, Plaintiffs will
6 argue that their authority to contract for out-of-state and federal inmates is found in
7 sections 7-32-2242 and 7-32-2243, MCA. These statutes were also enacted in 1989
8 as part of Senate Bill 452. While they mention use of a detention center by other
9 government entities, including local, state and federal law enforcement and
10 correctional agencies, they do not allow uses of the facility that are not authorized
11 in Mont. Code Ann. § 7-32-2203.

12 The clear intent of section 7-32-2242, is to address the payment of costs for
13 users of the facility. Subsection (1) of Mont. Code Ann. § 7-32-2242 provides that
14 when the detention center is utilized by other local, state or federal agencies "for the
15 confinement of arrested persons and the punishment of offenders," payment of the
16 cost for those services is set forth in Mont. Code Ann. § 7-32-2242. Subsection (2)
17 places the primary responsibility for costs on "the arresting agency." There is no
18 mention of costs for the confinement of out-of-state felons. The only reference to
19 persons from out-of-state appears in subsection (3), which addresses "fugitives from
20 justice from an out-of-state jurisdiction." In that limited circumstance, the expense
21 of holding the person in a detention center "pending extradition" must be paid by
22 the out-of-state jurisdiction.

23
24
25 ² See Mont. Code Ann. § 53-30-106, allowing the Department to declare when the
26 inmate population of a correctional institution is exceeded, and to contract with
27 other state, local and federal authorities for the confinement of Montana inmates in
that instance, or when the Department has no institution that is adequate for certain
inmates.

1 Similarly, the clear intent of § 7-32-2243(1) is to require that contracts for
2 detention services between state or local government units, the State of Montana, or
3 the federal government are to be made pursuant to the Interlocal Cooperation Act,
4 Title 7, chapter 11, part 1. Mont. Code Ann. § 7-32-2243(1). There is no indication
5 that the Legislature was expanding the traditional use of county jail/detention
6 centers to include long-term confinement of out-of-state or federal felons when it
7 assigned costs or contract obligations. This is particularly true given the
8 Legislature's simultaneous amendment of Mont. Code Ann. § 7-32-2203 regarding
9 who may be confined in a detention center.

10 Although subsection (2) of Mont. Code Ann. § 7-32-2243 authorizes a
11 detention center "to contract with a government unit of another state for the
12 confinement of lawfully committed inmates in a detention center located in either
13 jurisdiction," the meaning of this subsection is ambiguous given the restricted uses
14 of the facility in Mont. Code Ann. § 7-32-2203. Generally, the plain and
15 unambiguous language of a statute controls. Stop Over Spending Montana v. State,
16 2006 MT 178, ¶ 62, 333 Mont. 42, 139 P.3d 788. While the plain language of
17 Mont. Code Ann. § 7-32-2243(2) grants contracting authority, the extent of that
18 authority is unclear, particularly in light of Mont. Code Ann. § 7-32-2203. Given
19 this ambiguity, it is appropriate for the Court to consider legislative intent and other
20 means of statutory construction. Id.

21 The rules of statutory construction dictate that specific statutory provisions
22 control over more general statutes, and that the Legislature is presumed not to pass
23 meaningless legislation. See Montanans for Equal Application of Initiative Laws v.
24 State ex rel. Johnson, 2007 MT 75, ¶ 74, 336 Mont. 450, 76, 154 P.3d 1202;
25 Oster v. Valley County, 2006 MT 180, ¶ 17, 336 Mont. 76, 140 P.3d 1079. In this
26 case, Mont. Code Ann. § 7-32-2203 is the more specific statute, since it deals
27 particularly with the question of what inmates may be housed in a detention center,

1 compared to the more general discussion in Mont. Code Ann. § 7-32-2243(2) of
2 contracts. The specifications in Mont. Code Ann. § 7-32-2203 would be rendered
3 meaningless if local governments were free to add new categories of allowable
4 prisoners at will.

5 In the construction of a statute, the intent of the Legislature must be pursued,
6 if at all possible. Mont. Code Ann. § 1-2-102; Mont. Petroleum Tank Release
7 Comp. Bd. v. Crumlego, Inc., 2008 MT 2, ¶ 109 ____ Mont. ____, ____ P.3d ____.

8 Therefore, while the language of Mont. Code Ann. § 7-32-2243 allows a
9 government unit responsible for a detention center to “contract with a government
10 unit of another state for the confinement of lawfully committed inmates in a
11 detention center located in either jurisdiction,” that statute must be read in
12 conjunction with Mont. Code Ann. § 7-32-2203, and also with the overall intent of
13 the Legislature regarding Montana’s correctional system, discussed below.

14 Montana Code Annotated § 7-32-2203 specifies who may be confined in a
15 detention center, and does not authorize the long-term confinement of out-of-state
16 or federal inmates for purposes of a serving a felony sentence imposed in another
17 jurisdiction. The rules of statutory construction require that statutes relating to the
18 same subject matter be harmonized, as there is a presumption that the Legislature
19 would not have passed legislation that has no meaning or purpose. Oster v. Valley
20 County, 2006 MT at 17.

21 The only way to harmonize these statutes is to construe Mont. Code Ann.
22 § 7-32-2242(1) as allowing local government, state, and federal law enforcement
23 and correctional agencies to use a detention center, but only for the purposes set
24 forth in Mont. Code Ann. § 7-32-2203. Similarly, § 7-32-2243(2) must be
25 construed as allowing a government unit responsible for a detention center to
26 contract with a government unit of another state for the confinement of lawfully
27 committed inmates, but only for those purposes described in Mont. Code Ann.

1 § 7-32-2203. This interpretation does not prevent the Bureau of Indian Affairs
2 (BIA) from using the detention center to house adults who have been arrested and
3 are awaiting trial, as proposed in ¶ 22 of the Amended Complaint. The duration of
4 these confinements would presumably be short-term, which is consistent with the
5 nature and function of a county jail or local detention facility. However, Plaintiffs
6 are not entitled to contract with the BIA or other states for felony offenders who are
7 serving sentences and/or awaiting release from custody, or offenders convicted of
8 tribal violations occurring in Indian Country within the Crow, Northern Cheyenne,
9 Wind River, Blackfeet, and Spokane Indian reservations (see Amended Complaint,
10 ¶ 22), because those uses are not allowed by Mont. Code Ann. § 7-32-2203.

11 **B. Montana's Correctional Scheme Does Not Contemplate the**
12 **Interstate Exchange of Inmates for Profit.**

13 Not only is Plaintiffs' proposed use of the facility unauthorized, but it
14 conflicts with Montana's overall correctional scheme to provide appropriate
15 facilities and programs for *Montana offenders*. As shown below, nothing in the
16 statutes describing Montana's correctional facilities and programs contemplates the
17 interstate exchange of inmates as a means of financing those facilities or programs.
18 Moreover, where Montana's overall correctional scheme addresses out of state
19 offenders, it places sole and exclusive authority for controlling their movement
20 interstate with Montana's statewide correctional agency, the Department of
21 Corrections. Nothing authorizes a local entity such as Two Rivers to do the same.

22 The state prison in Deer Lodge is the historically recognized correctional
23 facility for adult felony offenders in Montana. Mont. Code Ann. § 53-30-101.
24 Starting in 1991, the Legislature began authorizing additional facilities and
25 programs as needed. For example, a state prison for adult female offenders was
26 added in 1991. Mont. Code Ann. § 53-3-101(2) (1991). Also in 1991, the
27 Legislature authorized the adult community corrections program in Mont. Code

1 Ann. tit. 53, ch. 30, pt. 2. The boot camp incarceration program was added the
2 following session. Title 53, chapter 30, part 4 (1993).

3 In 1995, the Legislature enacted the Regional Correctional Facility Act,
4 presumably in response to the need for additional prison space. Mont. Code Ann.
5 tit. 53, ch. 30, pt. 5 (1995). Currently, there are two regional correctional facilities
6 in Montana, one in Great Falls and one in Glendive. In 1997, the Legislature
7 authorized the construction of private correctional facilities. Mont. Code Ann.
8 tit. 53, ch. 30, pt. 6 (1997). There is one private correctional facility in Montana:
9 Crossroads Correctional Center in Shelby, Montana.

10 When the Legislature authorized private correctional facilities in 1997, it
11 specifically addressed out-of-state inmates, allowing use of a private correctional
12 facility to house out-of-state inmates brought into Montana pursuant to an Interstate
13 Compact agreement. Mont. Code Ann. § 53-30-603(2) (1997). Two years later,
14 however, the Legislature amended Mont. Code Ann. § 53-30-603 to strictly forbid
15 out-of-state or federal inmates in private correctional facilities. This continued until
16 2003, when the Legislature once again authorized use of a private correctional
17 facility to house out-of-state and federal inmates upon approval by the Department
18 of a written agreement between the originating jurisdiction and the private
19 correctional facility. Mont. Code Ann. § 53-30-603(3) (2003). In all cases,
20 however, the Legislature mandated that out-of-state and federal inmates be
21 physically separated from Montana inmates.

22 When originally enacted in 1995, the Regional Correctional Facility Act did
23 not mention out-of-state or federal inmates. In 1997, the Legislature amended
24 Mont. Code Ann. § 53-30-504 (granting the Department authority to contract for
25 detention center services) to include a new subsection (8), which does mention out-
26 of-state inmates: "A person convicted in another state may not be confined in the
27 state portion of a regional correctional facility in this state unless the confinement is

1 under and governed by Title 46, chapter 19, part 3 or 4 [the Interstate Compact
2 Provisions].” This provision was subsequently amended to read:

3 A regional correctional facility may house persons who are
4 charged or convicted in this state, another state, or federal court in the
5 detention center portion of a regional correctional facility. A person
6 charged or convicted in another state or charged or convicted in
7 federal court in another state may not be confined in a state
8 correctional facility portion of a regional correctional facility in this
state unless the confinement is under and governed by Title 46,
chapter 19, part 3 or 4, and the department authorizes the placement
of the person in the state correctional portion of the regional
correctional facility.

9 Mont. Code Ann. § 53-30-504(10) (1999). Thus, persons convicted in other
10 jurisdictions may be confined in a regional correctional facility, but only under
11 those circumstances described in Mont. Code Ann. § 53-30-504.

12 Ultimately, the Department of Corrections retains control over the interstate
13 movement of inmates in all facilities mentioned above. For example, the
14 Department has the authority to declare when inmate population is exceeded, and to
15 contract with other state, local and federal authorities for the confinement of
16 Montana inmates. Mont. Code Ann. § 53-30-106. The Department is the only
17 entity statutorily authorized to engage in the interstate exchange of felony offenders
18 under the Interstate Corrections Compact, Title 46, chapter 19. Mont. Code Ann.
19 § 46-19-402. Similarly, the State of Montana is a party to the Western Interstate
20 Corrections Compact described in Title 46, chapter 19, part 3, which allows for the
21 movement of inmates in the western states. No other government entity or
22 correctional facility or program described in Title 53, chapter 30, is authorized to
23 contract to bring prisoners into this State for any purpose.

24 These statutes demonstrate a legislative intent to strictly control the interstate
25 movement of inmates to and from Montana’s state correctional system. The fact
26 that detention centers are not a part of the state correctional system does not mean
27 their administrators have unfettered discretion regarding inmate population.

1 Detention centers are described in the local government provisions of the Montana
2 Code (Title 7) because of their historic purpose as county jails. The statutorily
3 authorized uses in Mont. Code Ann. § 7-32-2203 are consistent with those of a
4 “county jail,” and nothing in Title 7, chapter 32, part 22, allows the detention center
5 to freely contract for long-term confinement of inmates convicted in other
6 jurisdictions. Any other conclusion would transform the nature of the facility from
7 a county jail to a regional correctional facility, without any of the restrictions or
8 requirements imposed on those facilities as a component of Montana’s statewide
9 correctional system. The Legislature could not have intended such a result, as it
10 would directly conflict with the statutory prohibition against mixing out-of-state
11 populations.

12 In short, Plaintiffs are not entitled to a declaration that Mont. Code Ann.
13 §§ 7-32-2242 and -2243 allow them to freely contract with other states or the
14 federal government for inmates in order to fill the Two Rivers Detention Center to
15 capacity. Such a declaration would defeat the plain language of Mont. Code Ann.
16 § 7-32-2203, and would jeopardize the Legislature’s effort to limit the authority of
17 any correctional facility or governmental entity, other than the Department of
18 Corrections, to contract for the placement of Montana inmates out-of-state, or to
19 receive inmates from other jurisdictions.

20
21 **II. PLAINTIFFS FAIL TO STATE A CLAIM FOR INJUNCTIVE**
22 **RELIEF.**

23 Plaintiffs allege as a basis for injunctive relief that Defendants have
24 prevented them from contracting with other states and federal agencies for the
25 confinement of adult felony and misdemeanor offenders. See Amended Complaint,
26 ¶ 31. In fact, the statutes themselves prohibit Plaintiffs’ proposed activity rather
27 than any affirmative action by Defendants. Plaintiffs are free to contract for the

1 confinement of adult felony and misdemeanor offenders for those purposes listed in
2 Mont. Code Ann. § 7-32-2203. But they are forbidden by operation of law to
3 contract for any other purpose, including the confinement of adult felony offenders
4 order to serve a sentence imposed by another jurisdiction. In short, there is nothing
5 for this Court to “restrain” pursuant to Mont. Code Ann. § 27-19-201(1), so that
6 injunctive relief is not available.

7 Also as part of their request for injunctive relief, Plaintiffs ask this Court to
8 order the Attorney General opinion [52 Op. Atty Gen. No. 4 (2007)] be stayed or
9 withdrawn. The Attorney General has a statutory duty to give his opinion in
10 writing, without fee, to an appropriate government official or board, upon any
11 question of law relating to those respective offices. Mont. Code Ann.
12 § 2-15-501(7). An Attorney General opinion may be overruled by a state district
13 court or the Supreme Court. Id.; see also City of Bozeman v. Racicot, 253 Mont.
14 204, 832 P.2d 767 (1992). However, there is nothing authorizing this Court to
15 direct the Attorney General to withdraw an opinion that is lawfully issued. Such a
16 directive would violate the separation of powers in Article III, section 1 of the
17 Montana Constitution, which states:

18 The power of government of this state is divided into three
19 distinct branches – legislative, executive, and judicial. No person or
20 persons charged with the exercise of power properly belonging to one
branch shall exercise any power properly belonging to either of the
others, except as in this constitution expressly directed or permitted.

21 Since the Attorney General is a member of the executive branch of government, this
22 Court has no authority to order the opinion withdrawn. See State ex rel. Fletcher v.
23 District Court, 260 Mont. 410, 859 P.2d 992 (1993) (holding that the trial court
24 violated the Montana Constitution’s separation of powers provision by interfering
25 with the functions of the Attorney General and the county attorney while they were
26 acting lawfully and within their constitutional authority.)
27

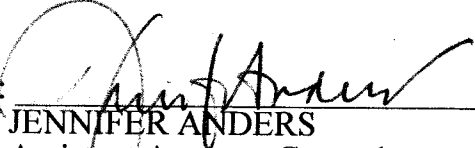
1 If this Court concludes that Plaintiffs are correct and that the statutes allow
2 them to contract with other states or the federal government for the housing of
3 inmates convicted in other jurisdictions, the Court may so declare. But the Court
4 has no authority to order the Attorney General's opinion to be withdrawn.

5
6 **CONCLUSION**

7 The request for declaratory and injunctive relief should be denied and the
8 Amended Complaint dismissed for failure to state a claim upon which relief can be
9 granted.

10 Respectfully submitted this 18th day of January, 2008.

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DATED

Jan. 18, 2008